

ARTICLE 34 ILLINOIS RECOURSE CREDITS

34.1 INTRODUCTION

- 34.1.1 In accordance with Title 83 Ill. Admin. Code Section 732, SBC ILLINOIS and CLEC hereby agree to the following with respect to Recourse Credits under the interconnection agreement in Illinois.
- 34.1.2 As used herein, **Consequential Damages** shall mean indirect, special, consequential, incidental or punitive damages, including loss on anticipated profits or revenues or any other economic loss in connection with or arising under the Agreement.
- 34.1.3 As used herein, **Customer Credits** shall mean those credits that CLEC provides to its end users pursuant to 83 IL Admin Code. Part 732, Section 732.30 and Section 732.35 for violation of a Local Exchange Service Obligation. **Customer** is defined as any person, building owner, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, etc., provided with local exchange carrier telecommunications services as defined in Section 13-204 of the Illinois Public Utilities Act (“Act”) (220 ILCS 5/13-204).
- 34.1.4 As used herein, **Local Exchange Service Obligations** means those basic local exchange service quality standards that telecommunications carriers are expected to fulfill in accordance with 83 IL Admin. Code Part 732, Section 732.20.
- 34.1.5 As used herein, **Recourse Credits** shall mean those credits that SBC ILLINOIS is required to provide to CLEC pursuant to 83 IL Admin. Code Part 732, Section 732.35, to reimburse CLEC for those Customer Credits paid by CLEC in the event that CLEC’s violation of a Local Exchange Service Obligation is caused by SBC ILLINOIS.
- 34.1.6 As used herein, **Recourse Credit Claim Form** shall mean the form which is attached as Exhibit RC, or other mutually agreed to form, e.g., the excel spreadsheet currently in use, through mutual agreement by the Parties, completed by CLEC and submitted to SBC ILLINOIS to request and obtain Recourse Credits. Exhibit RC shall also be available on the SBC CLEC Online website: <https://clec.sbc.com>.
- 34.1.7 This Article implements an Illinois-specific requirement imposed by 83 Ill. Admin Code Part 732, and corresponds to the terms and conditions by which SBC ILLINOIS provides Recourse Credits to CLEC pursuant to 83 Ill. Admin. Code Part 732. and then only to the extent required by that regulation.

34.2 REQUEST FOR REIMBURSEMENT

- 34.2.1 CLEC shall submit a Recourse Credit Claim Form to SBC ILLINOIS’ Local Service Center, via facsimile or email, by the 10th day of each month for which CLEC seeks

Recourse Credits. The Recourse Credit Claim Form shall separately identify all Customer Credits made, paid or otherwise provided by CLEC to its end users that were required by IL Admin. Code Section 732.30 during the preceding calendar month for which reimbursement is requested from SBC ILLINOIS.

- 34.2.2 The Recourse Credit Claim Form may also include requests pertaining to Customer Credits made, paid or otherwise provided by CLEC to its end users in prior months and not previously requested by CLEC in an earlier Recourse Credit Claim Form, provided, however, that CLEC shall have a maximum of ninety (90) days from the date on which the Customer Credits were credited, paid or provided by CLEC to its end users to request a Recourse Credit from SBC ILLINOIS. Provided further, that CLEC shall have ninety (90) days from earliest of a) the effective date of 83 IL Admin. Code Section 732.30(d) or b) the effective date of this Article to request reimbursement for Customer Credits paid to end users from August 1, 2001 to such effective date of this Article.
- 34.2.3 By submitting a Recourse Credit Claim Form requesting a Recourse Credit, CLEC represents and warrants to SBC ILLINOIS that (i) at the time CLEC submits such a Recourse Credit Claim Form that the information contained within is a true and correct calculation of the credit claimed due to CLEC based on information known to CLEC and information received by CLEC from its customer and relied upon for substantiation under 83 IL Admin. Code Part 732, Section 732.30, and (ii) that a credit in an amount that is not less than the one sought from SBC ILLINOIS was actually made to CLEC's end user associated with alleged violation of a Local Exchange Service Obligation.
- 34.2.4 CLEC's Recourse Credit Claim Form shall include the following information with respect to each request for Recourse Credit:
 - 34.2.4.1 The name and telephone number of CLEC's end user that was alleged affected;
 - 34.2.4.2 The Carrier Billing Account Number(s) (BAN(s))
 - 34.2.4.2.1 In order to expedite the processing of the Recourse Credit Requests, the Parties will mutually agreed upon the appropriate BAN(s), prior to CLEC's submission of its first Recourse Credit Request.
 - 34.2.4.3 The specific Local Exchange Service Obligation that was violated;
 - 34.2.4.4 Brief statement as to how the actions or inactions of SBC ILLINOIS, or failure or deficiency in any network element or service provided by SBC ILLINOIS to CLEC, caused the violation of the Local Exchange Service Obligation by CLEC;
 - 34.2.4.5 Amount of Customer Credit made, paid or provided by CLEC to its end user (including the cost to CLEC of any alternative telephone service provided to end user) for which Recourse Credit is requested, and the date or dates on which the Customer Credit was provided.

34.2.4.6 The SBC ILLINOIS Circuit Identification that involved with the violation; and

34.2.4.7 The SBC ILLINOIS Trouble Ticket Number.

34.3 RESPONSE TO REQUESTS FOR REIMBURSEMENT

34.3.1 SBC ILLINOIS shall have thirty (30) calendar days after receipt of CLEC's Recourse Credit Claim Form to notify CLEC in writing if it disputes a request for a Recourse Credit. Such notice shall separately identify each request for Recourse Credit that is disputed, and the basis on which SBC ILLINOIS disputes the reimbursement. A request for a Recourse Credit which is not disputed in writing by SBC ILLINOIS within the thirty (30) calendar day period shall be reimbursed by SBC ILLINOIS, subject to SBC ILLINOIS' right to seek recovery of credits pursuant to Section 34.6 of this Article.

34.3.2 For each request for Recourse Credit that is timely disputed by SBC ILLINOIS, the parties shall use the dispute resolution process set forth in the Agreement.

34.4 LIMITATION OF LIABILITY

34.4.1 SBC ILLINOIS shall not be required to make, pay or otherwise provide any Recourse Credit unless CLEC: (i) is legally required to pay a Customer Credit to its end users under 83 IL Admin. Code Part 732, and (ii) actually makes, pays, or otherwise provides such Customer Credit. In no event shall any Recourse Credit include any amount attributable to any liquidated damages or Consequential Damages or any other damages that CLEC may have paid its end user in excess of those credits expressly required by 83 IL Admin. Code Part 732, Section 732.30 (a) – (c).

34.4.2 SBC ILLINOIS shall not be required to provide CLEC with Recourse Credits if a violation of a Local Exchange Service Obligations resulted from one or more of the occurrences described in 83 IL Admin. Code Part 732, Section 732.30 (e).

34.4.3 In the event that SBC ILLINOIS is not the sole cause of a CLEC violation of a Local Exchange Service Obligation, the Parties shall agree to a reduction of the Recourse Credit based upon a proper allocation of fault. If the Parties cannot agree to the proper allocation of fault, the Parties shall resolve the issue by following the dispute resolution process set forth in the Agreement.

34.5 METHOD AND TIMING OF REIMBURSEMENT

34.5.1 Recourse Credits made under this Article shall be credited to CLEC on SBC ILLINOIS' invoice to CLEC for network elements or other services on the first billing date that is not less than thirty (30) Business Days after SBC ILLINOIS' receipt of the Recourse Credit Claim Form. Any Recourse Credit claims agreed to by SBC ILLINOIS after dispute resolution negotiations pursuant to Section 34.3.2 shall be credited to CLEC on SBC ILLINOIS' invoice to CLEC for network elements or other services on the first billing date that is not less than thirty (30) Business Days after dispute resolution negotiations.

conclude. Should dispute resolution fail, any request for Recourse Credits that SBC ILLINOIS is ordered to honor pursuant to an order by the Illinois Commerce Commission or court of competent jurisdiction shall be credited to CLEC on SBC ILLINOIS' invoice to CLEC for network elements or other services on the first billing date that is not less than thirty (30) Business Days after the effective date of such order.

- 34.5.2 Where reimbursement is to be made by credit on SBC ILLINOIS' invoice to the CLEC, the invoice shall show separately the credit and the reason for it.
- 34.5.3 Any disputed request for a Recourse Credit which SBC ILLINOIS is ordered to pay by the Commission as the result of a formal complaint proceeding initiated by CLEC or by a court, arbitration panel or other tribunal as a result of a proceeding initiated by CLEC, shall bear interest from the date the formal complaint proceeding or other proceeding was initiated by CLEC to the date of payment. Any disputed request for refund or repayment of a Recourse Credit previously provided by SBC ILLINOIS which CLEC is ordered to pay by the Commission as the result of a formal complaint proceeding initiated by SBC ILLINOIS or by a court, arbitration panel or other tribunal as a result of a proceeding initiated by SBC ILLINOIS, shall bear interest from the date the formal complaint proceeding or other proceeding was initiated by SBC ILLINOIS to the date of payment.

34.6 OBLIGATION TO UPDATE

- 34.6.1 If CLEC becomes aware of any inaccuracy or omission in any information that it previously provided to SBC ILLINOIS to substantiate Recourse Credit claims, including if such inaccuracy or omission arises from events subsequent to the submission, CLEC shall notify SBC ILLINOIS of such inaccuracy or omission within five (5) Business Days of becoming aware of such inaccuracy or omission, and do so on a per-Claim basis. If in light of such inaccuracy or omission, SBC ILLINOIS believes that a Recourse Credit(s) made should not or would not have been made under this Part 732, in whole or in part (even if CLEC provided a Customer Credit to its customer), SBC shall notify CLEC within ten (10) business days after receiving notice of the inaccuracy or omission from CLEC. CLEC shall have ten business days to notify SBC ILLINOIS that CLEC disputes such notice, or CLEC shall be deemed to have agreed with SBC ILLINOIS' notice, in which case SBC may recover such inappropriate credits on SBC ILLINOIS' invoice to CLEC. If CLEC disputes SBC ILLINOIS' notice the Parties shall use the dispute resolution process set forth in this Agreement.
- 34.6.2 If SBC ILLINOIS denies a Recourse Credit request, in whole or in part, and becomes aware of any inaccuracy or omission in the facts that it relied upon for its decision for that denial, SBC ILLINOIS shall notify CLEC of such inaccuracy or omission within five (5) Business Days of becoming aware of such inaccuracy or omission on a per-Claim basis. If such inaccuracy or omission resulted in SBC ILLINOIS failing to pay Recourse Credits, in whole or in part, to CLEC that it otherwise should have paid, SBC ILLINOIS shall provide such Recourse Credit not less than thirty (30) Business Days after SBC ILLINOIS agrees that such Recourse Credit should have been paid.

34.7 RESERVATION OF RIGHTS

- 34.7.1 The Parties acknowledge and agree that this Article is the result of an Illinois law and Illinois Commerce Commission regulations imposing Illinois-specific requirements and is not entered into to fulfill any Section 251 or 252 requirement or obligation. SBC ILLINOIS is not admitting that this Article or any subject addressed herein is subject to Section 251 or 252, nor is it waiving its rights to take any position with respect to the application of the Section 251/252 process.